

SENATE BILL REPORT

SB 5833

As Reported By Senate Committee On:
Judiciary, February 28, 2007

Title: An act relating to a claim filed against a design professional.

Brief Description: Requiring the filing of a certificate of merit when a claim is filed against a design professional.

Sponsors: Senators Hargrove and Carrell.

Brief History:

Committee Activity: Judiciary: 2/16/07, 2/28/07 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; McCaslin, Ranking Minority Member; Hargrove, Murray and Weinstein.

Staff: Lidia Mori (786-7755)

Background: Current law, RCW 7.70.150, provides that in an action against an individual health care provider for personal injury or wrongful death in which the injury is alleged to have been caused by an act or omission that violates the accepted standard of care, the plaintiff is required to file a certificate of merit at the time of commencing the action. If the action is commenced within 45 days prior to the expiration of the applicable statute of limitations, the plaintiff must file the certificate of merit no later than 45 days after commencing the action. The certificate of merit must be executed by a health care provider who meets the qualifications of an expert in the action. The person commencing the action must file a certificate of merit for each defendant. The certificate must contain a statement that the person executing the certificate of merit believes, based on the information known at the time of executing the certificate of merit, that there is a reasonable probability that the defendant's conduct did not follow the accepted standard of care required to be exercised by the defendant. The court may grant an additional period of time to file the certificate of merit, not to exceed 90 days, if the court finds there is good cause for the extension. Failure to file a certificate of merit that complies with the law is grounds for dismissal of the case. If a case is dismissed for failure to file a certificate of merit, the filing of the claim against the health care provider must not be used against him or her in professional liability insurance rate setting, personal credit history, or professional licensing and credentialing.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: A "design professional" is defined as an architect, professional engineer, land surveyor, landscape architect, or geologist who is licensed and authorized by law to practice his or her profession and any employee or subconsultant of the those same professions, acting in the course and scope of his or her employment. It also includes any professional service corporation or architectural corporation that renders design services. An entity that employs one or more architects, professional engineers, land surveyors, landscape architects, or geologists or any employees or subconsultants of the those professions is also included in the definition.

A claimant must file a certificate of merit at the time of filing a claim against each design professional in which a loss is alleged to have been caused by an act or omission that violates the standard of care. If the claim is filed within 45 days of the expiration of the applicable statute of limitations, the claimant must file the certificate of merit no later than 45 days after filing the claim. A certificate of merit is required to contain a statement that there is a reasonable probability that the design professional's conduct did not follow the accepted standard of care and that the conduct was a cause of the claimed loss. The certificate must be executed by a design professional who holds a license, certificate, or registration issued by the state of Washington or another state and who practices in the same specialty as that of the design professional against whom the claim is filed. The court may grant an extension of time to file the certificate of merit, not to exceed 90 days, if the court finds good cause for the extension. The design professional is not required to file an answer to any claim until 20 days after the certificate of merit has been filed. Failure to file a certificate of merit is grounds for dismissal of the claim and the filing of the claim may not be used against the design professional in liability insurance rate setting, personal credit history, professional licensing, or credentialing.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill will reduce case backlog and focus on meritorious claims. Shotgun lawsuits are filed when any problem occurs on a construction site. Everyone that's had anything to do with the project gets sued. Early settlements are sought because parties know the expense of fighting the lawsuit. A decision has to be made, is it worth the tens of thousands of dollars to fight the suit even though there's no evidence to substantiate the claim? This bill contains the same language as was in last year's medical malpractice bill except the time of the certificate of merit is brought to the front. The procedure in this bill would streamline the proceeding and it doesn't change the burden of proof for the plaintiff, it just changes the timing. The courts should be available to people who have claims with merit. There are good public policy reasons underlying this bill.

CON: When an attorney signs a complaint, he or she is subject to Rule 11 and therefore, the person is saying that he or she has done a reasonable amount of investigation. Where is the next line drawn? With regard to the certificate of merit in medical malpractice cases, defense

firms are already claiming that the certificate of merit that is filed is not adequate, that the person that provided it was not a good enough expert in the particular specialty at issue.

Persons Testifying: PRO: Cliff Webster, Architects and Engineers Legislative Council, American Institute of Architects; Jim Miller, American Council of Engineering Companies, GeoEngineers, Inc; Beth Andrews, Skellenger Bender.

CON: Michael Temple, Washington State Trial Lawyers Association.